

NL INDUSTRIES, INC.

IBLA 79-277

Decided May 29, 1979

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U-40063.

Affirmed as modified; case remanded.

1. Oil and Gas Leases: Applications: Generally

An oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of corporate qualifications nor makes reference to a proper serial number of a record in which such statement had previously been filed.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Amendments

Where an over-the-counter noncompetitive oil and gas lease offer is filed by a corporation unaccompanied by a statement of its qualifications or a reference by serial number to the record in which it has been filed, and such defect is remedied prior to the filing of any junior offer, the first offer may be considered with priority as of the date the curative data is filed.

APPEARANCES: H. Byron Mock, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

NL Industries, Inc., has appealed from a decision of February 5, 1979, by the Utah State Office, Bureau of Land Management (BLM), which rejected its noncompetitive oil and gas lease offer U-40063 filed

April 7, 1978, because its corporate qualifications for NL Industries, Inc., "Magnesium Division," did not accompany the application nor were they filed under serial number U-12292, to which appellant had referred. ^{1/} Appellant had stated that the Magnesium Division is one of several divisions of NL Industries, Inc., and evidence of its authority to hold oil and gas leases is shown in the case file of U-12292, a right-of-way still actively held by NL Industries, Inc. (formerly National Lead Company).

The BLM decision rejecting appellant's offer indicated that the corporate qualifications for NL Industries, Inc., Magnesium Division, to file oil and gas lease offers are not in file U-12292. The latest corporate qualification filing found was dated September 27, 1977, in the Eastern States Office (ES 17943). These qualifications are for NL Industries, Inc. There is no mention of "Magnesium Division" in this filing. James B. Chaney, General Manager, is not authorized to act under these qualifications.

Appellant acknowledges that the qualifications of NL Industries to hold oil and gas leases and authority of James B. Chaney, General Manager of NL Industries, Magnesium Division, to submit oil and gas lease offers in the name of the company are filed under serial number U-0142200.

Appellant argues that the "update" of NL Industries, Inc., qualifications by adding reference to serial number ES-17943 did not rescind other qualifications of NL Industries, Inc., on file in the Utah State Office, nor terminate the authority of Mr. Chaney to file for NL Industries, Inc. To the contrary, appellant argues that Mr. Chaney's authority to submit such offers was confirmed by the BLM State office letter dated September 10, 1975 (Statement of Reasons, Attachment A).

A review of the September 10, 1975, letter addressed to counsel for appellant reveals that Mr. Chaney's documented authorization to file oil and gas leases on behalf of the Magnesium Division, NL Industries, Inc., was indeed recognized and approved by the BLM. Pursuant to this acknowledgment, however, the letter further stated, "[t]hese documents have been filed under serial number U-0142200, which is a general corporate qualifications file. Please refer to that number when filing future oil and gas offers or assignments." (Emphasis supplied.)

[1] Despite BLM's request regarding such future filings, appellant in filing offer U-40063 on April 7, 1978, neglected to refer to the general serial number U-0142200, but stated in Item No. 5 of the offer to lease form that "NL Industries Inc. is a New Jersey Corporation qualified to hold U.S. Government lease under U-12292 filed

^{1/} See 43 CFR 3102.4-1 (1977).

12-8-71 at SLC, Ut." The application was then signed "NL Industries, Inc., Magnesium Division, James B. Chaney, General Manager." As the current corporate qualifications for NL Industries, Inc., Magnesium Division, to file such offers were not contained in U-12292, but rather in U-0142200, the BLM thus acted correctly in rejecting the application.

An oil and gas lease offer is properly rejected where the offer is neither accompanied by a statement of corporate qualifications nor makes reference to a proper serial number of a record in which such statement had previously been filed. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067, 1070 (10th Cir. 1976), aff'g Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974).

[2] Where the offer has been filed "over the counter," a defect can be remedied prior to the filing of any junior offer and earn priority as of the time the curative data is filed. Bear Creek Corp., 5 IBLA 202 (1972); Ballard, supra, 18 IBLA 28, n. 1. This Department has consistently held that a noncompetitive lease offer which is defective earns no priority on the date of its filing, but where the defect is "curable," priority is established as of the date the defect is remedied. Kenneth E. Sites, 13 IBLA 276 (1973); William D. Sexton, 9 IBLA 316 (1973); William B. Collins, 4 IBLA 8 (1971); Irwin Rubenstein, 3 IBLA 250 (1971); Celia R. Kammerman, 66 I.D. 255, 263 (1959). With its notice of appeal, filed March 6, 1979, the appellant transmitted the necessary documents to cure the defect, and therefore, the offer may be considered with priority as of that date.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed as modified and the case is remanded for appropriate action consistent with this decision.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge.

